THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18513 and 18913 of 1997

Dated: 17-07-2006

Between:

Andhra Pradesh Paper Mills Limited, Rajahmundry.

..... PETITIONER

AND

The Authority under Payment of Wages Act-
cum-Deputy Commissioner of Labour, Eluru, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION Nos.18513 and 18913 of 1997

COMMON ORDER:

A common question arises for consideration in these two writ petitions filed by M/s Andhra Pradesh Paper Mills Limited, Rajahmundry, aggrieved by the orders passed in different payment of wages cases. As many as thirty one cases were filed by the second respondent herein under Section 15 of the Payment of Wages Act, 1936 (the Act, for brevity) before the first respondent which were allowed by common order dated 03-04-1997 directing the petitioner-company to pay a sum of Rs.7.26 lakhs towards differential wages (between contractual wage and minimum wage) and also pay compensation of Rs.14.52 lakhs.

The Assistant Labour Officer, second respondent herein, filed said cases under the Act being Case Nos.P.W.6/96 to P.W.35/96 and P.W.44/96. In all the cases the petitioner-company was shown as opposite party No.1 and its Chairman and Vice President were shown as opposite party Nos. 2 and 3 respectively, and the contractors of labour were shown as opposite party No.4. The main allegation was that the petitioner-company failed to pay the minimum wages under Rule 25 (iv) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971 (the Andhra Pradesh Rules, for brevity). The applications were opposed by the petitioner-company *inter alia* on the ground that the minimum wages under Rule 24 of the Andhra Pradesh Rules cannot be enforced against the principal employer and that the principal employer is liable to pay only the contractual wages under Section 21 (4) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Act, 1970 (the Contract Labour Act, for short). The objection of the petitioner-company was overruled and the first respondent, namely, the Authority under Payment of Wages Act-cum-Deputy Commissioner of Labour, came to the conclusion that being the principal employer, the opposite party No.1, petitioner-company herein, is bound by statutory obligation under the Contract Labour Act and accordingly directed payment of differential wages as noticed hereinabove.

Heard the learned counsel for the petitioner-company and the learned Government Pleader for Labour appearing for the respondents.

Learned counsel for the petitioner-company has taken this Court through Section 21 of the Contract Labour Act as well as Rule 25 of the Andhra Pradesh Rules and submits that the word 'wages' used in Section 21 (4) of the Contract Labour Act only refers to the contractual wages and therefore, the obligation on the part of the principal employer

is to pay the difference between the wages contracted under the agreement and the lesser wages paid by the contractor and there is no obligation to pay the minimum wages or wages paid to regular employees of the principal employer. He placed reliance on the decision of the Supreme Court in **Hindustan Steelworks Construction Ltd. v. Commissioner of Labour**[1].

In **Hindustan Steelworks Construction Ltd. v. Commissioner of Labour** (supra), the principal employer, namely, Hindustan Steelworks Construction Limited (HSCL), the appellant therein, engaged M/s Investigation and Security Services India Private Limited (ISSI) for providing security guards, shift in charge and security sergeants and entered into an agreement for supply of contract labour. The Assistant Commissioner of Labour (enforcement) during an inspection found that there was difference between the wages paid by HSCL to its own watch and ward staff and the contract labour supplied by ISSI and accordingly filed a complaint under Rule 25 (v)(a) of the Andhra Pradesh Rules before the Commissioner, who, by order dated 13-08-1984, held that the principal employer was liable to pay the wages as paid to its own watch and ward staff to the contract labour as well. On a challenge before this Court, a learned single Judge dismissed the writ petition. But on appeal, a Division Bench reversed the judgment of the learned single Judge and directed HSCL to pay the contract labour the difference between the wages paid by the contractor and the wages which were paid by it to its own staff. In this background the Supreme Court considered the question whether the principal employer is liable to pay the contract workers any amount which constitutes the difference between the wages payable to the contract labour by the contractor and the wages paid by the appellant to its own employees doing similar work. After referring to the definition of wages in Section 2 (vi) of the Act, Section 21(4) of the Contract Labour Act and Rule 25 (v)(a) of the Andhra Pradesh Rules, the Supreme Court ruled out that the principal employer is not liable to pay additional amount under Section 21(4) of the Contract Labour Act and that the liability extends only to the payment of contractual wages in the event of failure on the part of the contractor and recover such contractual wages from the contractor. The relevant observations and the reasoning for the ratio is as follows.

> Rule 25 of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971 imposes on the contractor certain conditions subject to which a licence is granted to him. One such condition is to the effect that the contractor shall not pay to the contract labour in his employment wages which are lower than the wages paid by the principal employer to his own workers which do the same or similar kind of work. This is a condition of the contractor's

licence. There is no provision under these rules by which the principal employer is made liable for payment in the event of non-compliance by the contractor with this condition. If the contractor commits a breach of the conditions of his licence he alone will take the consequences. The right of the workers to recover any additional wages which may be so determined would be against the contractor. Section 21(4) has no application to a situation where a contractor may have paid the wages but has not complied with the condition imposed by Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. The definition of wages under Section 2 of Contract Labour (Regulation and Abolition) Act, 1970 read with the definition of wages under the Payment of Wages Act, 1936, does not cover any additional amount found payable under Rule 25(v) (a) if the principal employer has its own workers doing similar work. If the principal employer does not have any employees doing similar work that question will not arise. Such contingencies are not covered by Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractor cannot recover any such additional amount from the principal employer under Section 21(4). Significantly, in the present proceedings the workers are not a party at all. It is the contractor who sought to quash a finding given by the Commissioner of Labour under the proviso to Rule 25(v) (a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. In the present appeal before us also the contract workers employed by the fourth respondent are not a party. The dispute is between the contractor and the principal employer. We are, therefore, not called upon to pronounce on the rights of the contract labour employed by the fourth respondent to recover these amounts. The appellant, however, who is the principal employer, is not liable to pay this additional amount under Section 21(4). The appellant would, however, be liable under Section 21(4) to pay to the workers any difference between the wages contracted for under its agreement with the fourth respondent-
contractor and the lesser wages actually paid by the contractor to contract labour, and recover the same from the contractor.

(emphasis supplied)

Following the dicta laid down by the Supreme Court, the submission of the learned counsel for the petitioner-company commends itself to this Court. Accordingly these writ petitions are allowed and the impugned order of the first respondent dated 03-04-1997 is quashed as one without jurisdiction. There shall be no order as to costs.

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V.V.S.RAO, J

17th July, 2006
ghn

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[1] (1996) 10 SCC 599